



COMMONWEALTH OF VIRGINIA

Department Of Human Resource Management

Office of Employment Dispute Resolution

DECISION OF HEARING OFFICER

In re:

Case number: 12223

Hearing Date: April 8, 2025

Decision Issued: May 20, 2025

PROCEDURAL HISTORY

On June 11, 2024, Grievant was issued a Group III Written Notice of disciplinary action for conducting an unauthorized strip search of a Facility visitor.

On June 14, 2024, Grievant timely filed a grievance to challenge the Agency's action. The matter advanced to hearing. During the grievance process, the Agency reduced the discipline to a **Group I Written Notice**.¹ The outcome of the Third Resolution Step was not satisfactory to the Grievant and the matter advanced to hearing. On January 21, 2025, the Office of Employment Dispute Resolution assigned this matter to the Hearing Officer. On April 8, 2025, a hearing was held at the Facility.

APPEARANCES

Grievant
Agency Legal Advocate
Agency Party Designee
Witnesses

¹ See Agency Ex. at 4-8. Although the Agency did not provide a copy of the Written Notice reflecting the mitigation of the discipline to a Group I Written Notice rather than a Group III Written Notice, the Agency provided a copy of the Third-Resolution Step Employee Grievance Response noting that the Third-Step Respondent supported the decision by the Second-Step Respondent to reduce the Group III to a Group I.¹ The Assistant Warden also testified that the discipline had been reduced during the grievance process from a Group III to a Group I. Hearing Recording at 52:04-54:40, 59:03-1:01:37.

ISSUES

1. Whether Grievant engaged in the behavior described in the Group I Written Notice?
2. Whether the behavior constituted misconduct?
3. Whether the Agency's discipline was consistent with law (e.g., free of unlawful discrimination) and policy (e.g. properly characterized as a Group I, II or III offense)?
4. Whether there were mitigating circumstances justifying a reduction or removal of the disciplinary action, and if so, whether aggravating circumstances existed that would overcome the mitigating circumstances?

BURDEN OF PROOF

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstances. The employee has the burden of raising and establishing any affirmative defenses to discipline and any evidence of mitigating circumstances related to discipline. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows that what is sought to be proved is more probable than not. GPM § 9.

FINDINGS OF FACT

After reviewing the evidence presented and observing the demeanor of each witness, the Hearing Officer makes the following findings of fact:

Grievant is a Sergeant at a Department of Corrections Facility. Grievant has worked for the Agency for approximately 10 years.² No evidence of prior active disciplinary action was introduced during the hearing.

As a Sergeant, Grievant works in a supervisory role over correctional officers and may be called upon to work in any area of the Facility.³

Grievant normally worked in the Restorative Housing unit of the Facility. Prior to May 5, 2024, Grievant had never worked at the Front Entry of the Facility.

On May 5, 2024, members of the public were entering the Facility through the Facility's Front Entry in order to visit certain Facility inmates. Prior to being allowed to proceed to their visitation with an inmate, visitors were required to sign-in with the corrections officer working at the Front Entry and then be scanned by the Facility's full-body X-ray screening system (full-body scanner). If the body scan image of a visitor showed an anomaly, the Agency had procedures for determining whether the visitor

² Hearing Recording at 1:29:00-1:29:57.

³ Hearing Recording at 1:10:25-1:11:33, 1:27:00-1:27:25.

would be allowed to have an in-person visit (contact) or video no-contact visit with the inmate.

On May 5, 2024, Grievant was working on post in a housing unit at the Facility. Grievant testified that she had been instructed by the Watch Commander several times that morning to perform strip searches of Facility inmates that were seeing visitors that day.⁴

Around 10:00 am that morning, Officer-1 was working at the Facility's Front Entry and called the Watch Commander to request that a female staff member be sent to the Front Entry to assist Officer-1.⁵

Watch Commander called Grievant and requested that she report to the Front Entry to assist Officer-1.⁶

When Grievant arrived at the Front Entry, Officer-1 showed Grievant an image of a visitor from the Facility's body scanner. Officer-1 told Grievant that she believed the image showed an anomaly. Grievant reviewed the image of the visitor and agreed that there appeared to be "something" there. Officer-1 told Grievant that they had to conduct a strip search of the visitor.⁷

Grievant and Officer-1 directed the visitor to a side room. Grievant testified that the visitor agreed to a strip search. According to Grievant, Grievant and Officer-1 performed what Grievant described as a "partial" strip search of the visitor. Based on Grievant's written statement of the incident, the visitor removed her shirt and pulled up her bra, but the visitor did not remove her pants, underwear, socks or shoes.⁸

After the search of the visitor was concluded, Grievant returned to the Watch Office and reported to the Watch Commander that Grievant and Officer-1 had conducted a strip search of the visitor. Watch Commander advised Grievant that they should not have performed the strip search of the visitor and sent Grievant back to her post in the housing unit. Watch Commander then reported the incident to the Major.⁹

CONCLUSIONS OF POLICY

Operating Procedure 445.1¹⁰ sets forth the procedures the Agency uses to detect and prevent entry of contraband into Agency facilities by screening and searching visitors to the facilities. Operating Procedure 445.1 sets forth the parameters and procedures for

⁴ Hearing Recording at 1:21:20-1:23:18. An inmate receiving a visitor is subject to a strip search both before and after the visit. See Hearing Recording at 26:27-27:20.

⁵ Agency Ex. at 16.

⁶ Agency Ex. at 19 and Hearing Recording at 1:21:20-1:23:18.

⁷ Hearing Recording at 1:21:20-1:23:18.

⁸ Hearing Recording at 1:21:20-1:23:18 and Agency Ex. at 19.

⁹ Hearing Recording at 24:35-26:37, 1:21:20-1:23:18.

¹⁰ Virginia Department of Corrections Operating Procedure 445.1, Screenings & Searches of Inmate and CCAP Probationers/Parolee Visitors.

screenings and provides that when an anomaly is detected during a full-body X-ray screening of a visitor, a supervisor will meet with and further question the visitor:

- a. If the alert cannot be explained satisfactorily, the visitor will be offered a non-contact video visit not to exceed 55 minutes.
- b. If a visitor claims the anomaly detected is a surgical implant; the visitor must provide medical documentation to be considered for a contact visit in the future.
- c. If a detection canine team is available, a detection canine search may be conducted.

The option of a strip search will not be made available for an anomaly detected by the full-body X-ray screening system.¹¹

Whether Grievant engaged in the behavior and whether the behavior constituted misconduct

Grievant engaged in misconduct when she conducted a strip search of a Facility visitor on May 5, 2024. Agency policy makes clear that when the full body scan of a visitor shows an anomaly, the option of a strip search will not be made available to the visitor even if the visitor were to agree to the search.

Grievant argued that Watch Commander's instruction to her to assist Officer-1 did not provide her with clear instructions as to what she was expected to do to assist Officer-1. Grievant also testified that Officer-1 told Grievant that Watch Commander had stated that they had to perform a strip search. According to Grievant, the incorrect information provided by Officer-1 combined with Watch Commander's unclear instruction to Grievant gave Grievant the impression that she had been sent to the Front Entry area to perform a strip search. Grievant suggested that her impression was further supported because Watch Commander had instructed her to perform strip searches of inmates that same morning. Grievant argued that she was unfamiliar with the work in the Front Entry area and that when she first started at the Facility, officers would, at times, strip search visitors. Grievant testified, however, that she had never performed a strip search of a visitor at the Facility before the incident on May 5, 2024.¹²

It was reasonable for the Agency to expect that Grievant would follow Agency policies and that she would ask a superior officer if she found herself in an unfamiliar situation and needed further instruction or guidance. This is particularly so in a situation such as this that involved an intrusive search of someone who was not an employee or inmate of the Facility. Even if Officer-1 told Grievant that Watch Commander had instructed that they conduct the strip search as Grievant asserted, Grievant, not Officer-1 was the officer with supervisory authority in this situation. Because such a search was

¹¹ Virginia Department of Corrections Operating Procedure 445.1, Screenings & Searches of Inmate and CCAP Probationers/Parolee Visitors, Procedure II.G.5 & 6.

¹² Hearing Recording at 1:21:20-1:23:57, 1:25:15-1:25:56, 1:28:02-1:29:00.

contrary to Agency policy, Grievant should have questioned Officer-1's statement and spoken directly with Watch Commander to confirm his instruction. Although Grievant argued that she was unfamiliar with the policy change made in August 2023 regarding strip searches of visitors, the Agency's policy was clear with respect to the situation Grievant found herself in. Grievant did not offer any evidence to support her assertion that she had inadequate notice of the Agency's policy. Agency witnesses testified that the Agency policies were available on the Agency's intranet and that the Agency makes staff aware of policy changes through Agency-wide emails to staff, security briefings, and trainings.¹³

The Agency has met its burden to prove by a preponderance of the evidence that Grievant engaged in misconduct when she performed a strip search of a Facility visitor on May 5, 2024, that was contrary to Agency policy.

Whether the Agency's discipline was consistent with law and policy

Unacceptable behavior is divided into three types of offenses, according to their severity. Group I offenses "include acts of minor misconduct that require formal disciplinary action." Group II offenses "include acts of misconduct of a more serious and/or repeat nature that require formal disciplinary action." Group III offenses "include acts of misconduct of such a severe nature that a first occurrence normally should warrant termination."¹⁴

Failure to follow policy is a Group II offense. Unsatisfactory performance is a Group I offense. In this case, Grievant was expected to follow Agency policies and procedures related to searches of visitors. If Grievant did not understand or was unsure about the appropriate policy or procedure to apply in a particular situation, the Agency had a reasonable expectation that Grievant would ask for guidance from the Watch Commander or another superior officer. In this case, Grievant did not meet this reasonable expectation and Grievant performed an unauthorized strip search of a Facility visitor contrary to Agency policy.

The Agency's issuance of a Group I Written Notice to Grievant was consistent with law and policy.

Mitigation

Grievant argued that the discipline was too harsh for an employee with a record of good work performance and no prior discipline.

In this case, Assistant Warden testified that the Agency considered several factors to mitigate the discipline from a Group III Written Notice to a Group I Written Notice including, Grievant's good work performance, years of service, absence of prior discipline, and honesty during the investigation. That the Agency could have further mitigated the

¹³ See Hearing Recording at 28:20-29:39, 37:57-38:56, 1:02:10-1:07:09.

¹⁴ See Virginia Department of Corrections Operating Procedure 135.1.

discipline but chose not to is not a reason for the Hearing Officer to conclude that the Agency's action exceeds the limits of reasonableness.

Virginia Code § 2.2-3005.1 authorizes hearing officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Human Resource Management...."¹⁵ Under the Rules for Conducting Grievance Hearings, "[a] hearing officer must give deference to the agency's consideration and assessment of any mitigating and aggravating circumstances. Thus, a hearing officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. If the hearing officer mitigates the agency's discipline, the hearing officer shall state in the hearing decision the basis for mitigation." A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating, (2) the agency has consistently applied disciplinary action among similarly situated employees, and (3) the disciplinary action was free of improper motive. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

DECISION

For the reasons stated herein, the Agency's issuance to Grievant of a Group I Written Notice of disciplinary action is **upheld**.

APPEAL RIGHTS

You may request an administrative review by EDR within **15 calendar** days from the date the decision was issued. Your request must be in writing and must be **received** by EDR within 15 calendar days of the date the decision was issued.

Please address your request to:

Office of Employment Dispute Resolution
Department of Human Resource Management
101 North 14th St., 12th Floor
Richmond, VA 23219

or, send by e-mail to EDR@dhrm.virginia.gov, or by fax to (804) 786-1606.

You must also provide a copy of your appeal to the other party and the hearing officer. The hearing officer's **decision becomes final** when the 15-calendar-day period has expired, or when requests for administrative review have been decided.

A challenge that the hearing decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. A challenge that the hearing decision is not in compliance with the grievance procedure, or a request to present newly discovered evidence, must

¹⁵ Va. Code § 2.2-3005.

refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within **30 days** of the date when the decision becomes final.¹⁶

Angela Jenkins

Angela Jenkins, Esq.
Hearing Officer

¹⁶ See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant.